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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|----------------------|------------------|
| 09/727,117 | 11/30/2000 | Robert G. Arther | Mo-6049/MD-00-112-TG | 2400 |
| 7590 06/29/2004 | | | EXAMINER | |
| BAYER CORPORATION | | | QAZI, SABIHA NAIM | |
| 400 MORGAN LANE | | | ART UNIT | |
| WEST HAVEN, CT 06516-4175 | | | PAPER NUMBER | |

1616

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,117

Applicant(s)

ARTHER, ROBERT G.

Examiner

Sabiha N. Qazi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1,2 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 2 and 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/36/04 has been entered.
2. Claims 1, 2 and 6-10 are pending and are rejected. No claim is allowed at present time.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 2, 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorn et al. (US Patent 6,232,328). Dorn et al. teach the combination of pyrethroid and nicotinylic compound for the control of parasitic insects such as fleas, lice and flies, which embrace presently, claimed invention. See the entire document especially lines 8-10 and lines 35-68 in col. 17; lines 10-26 in col. 18; lines 5-10, lines 25-30 in col. 1.

Instant claims differ from the reference in claiming specifically synergistic combination and method of treating wherein prior art teaches that the active compounds can be present in the form of a mixture may be synergists or other active compounds such as pyrethroids etc., see lines 5-10 in col. 17.

It would have been obvious to one skilled in the art at the time of invention to prepare additional beneficial composition for controlling insects because prior art teaches control of insects by the same combination of compounds as taught by the prior art. Since the synergistic

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combination is taught by the prior art therefore there is a motivation to prepare the formulation for controlling insects.

Dorn et al. teaches the combination of pyrethroid and nicotinylic compound for the control of parasitic insects such as fleas, lice and flies. Furthermore, it also teaches that the active compounds can be present in the form of a mixture may be synergists or other active compounds such as pyrethroids etc., see lines 5-10 in col. 17.

The present specification discloses the combination of a pyrethroid and a chloronicotinyl insecticide which provides enhanced activity against ticks and mites, while maintaining the activity of chloronicotinyl compounds against fleas", (lines 20-23 on page 3). Synergistic effect of the combination with chloronicotinylic (imidazloprid) and pyreththroid (premethrin) is disclosed. Since prior art teaches synergistic effect of such combinations, one skilled in the art would expect synergism with any combination such as imidazloprid and premethrin, which has been presently claimed.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is 703-305-3910. The examiner can normally be reached on every business day.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

6/26/04



SABIHA QAZI, PH.D
PRIMARY EXAMINER